

Message Text

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ACTION EA-10

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FM AMEMBASSY TOKYO

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C O N F I D E N T I A L TOKYO 16797

E.O. 11652: GDS

TAGS: CPRS PFOR SNAR JA

SUBJ: JUDICIAL ASSISTANCE - DEPARTMENT OF JUSTICE DEPOSITION
REQUEST

REF: TOKYO 16736

1. AFTER DAY-LONG CONFERENCE WITH MINISTRY OF JUSTICE (MOJ) AND
POLICE OFFICIALS, NUMATA (MOFA) INFORMED EMBASSY OFFICER DECEMBER
26 THAT GOJ HOPES TO BE ABLE TO GIVE FORMAL, WRITTEN APPROVAL FOR
DEPOSITION WITHIN DEADLINE SET BY COURT BUT MUST FIRST HAVE
AGREEMENT FROM DEPARTMENTS OF STATE AND JUSTICE ON FOLLOWING
POINTS:

A) PLACE -- GOJ DESIRES DEPOSITION BE TAKEN AT YOKOSUKA PRISON
WITH JAPANESE PRISON, IMMIGRATION AND MOFA OFFICIALS PRESENT AT
PROCEEDINGS. (PRESENCE OF MOFA OFFICIAL WOULD
BE DESIGNED TO ASSURE GOJ THAT PRISONERS TESTIFYING VOLUNTARILY.
NUMATA SAID MOFA ALSO CONSIDERING SENDING REPRESENTATIVE TO PRISON
IN ADVANCE TO OBTAIN PRISONERS' ASSURANCES IN THIS REGARD.)
B) FORMAT -- GOJ DESIRES NAMES, TITLES AND FUNCTIONS OF ALL PERSONS
FROM US SIDE WHO WILL BE PRESENT AT DEPOSITION IN ORDER TO BE ABLE TO
DETERMINE AND INSTRUCT JAPANESE CONSULATE GENERAL IN SAN FRANCISCO
AS TO TYPE OF VISAS THEY WILL REQUIRE. GOJ SPECIFICALLY REQUESTS
THAT NO COURT EMPLOYEES OR OFFICIALS, SUCH AS COURT REPORTERS OR
CLERKS, BE BROUGHT TO JAPAN, AND WANTS ASSURANCES THAT US ATTORNEYS
WILL NOT BRING PHYSICAL EVIDENCE (SPECIFICALLY HEROIN) INTO JAPAN.
FOR ITS PART, GOJ WILLING ALLOW US SIDE TO EXAMINE ANY EVIDENCE
IN ITS POSSESSION WHICH MAY HAVE BEARING ON CASE BUT WILL NOT ALLOW
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IT TO BE TAKEN TO US FOR INTRODUCTION AT TRIAL.

C) GOJ WANTS ASSURANCE THAT USG WILL RECIPROCALLY APPROVE REQUEST OF GOJ FOR TAKING OF DEPOSITION IN US IN SAME CIRCUMSTANCES SHOULD OCCASION ARISE.

D) NOTIFICATION -- GOJ WANTS TO KNOW HOW US SIDE PROPOSES TO NOTIFY DEPONENTS OF DEPOSITION AND WISHES SEE TEXT OF NOTIFICATION IN ADVANCE. (NUMATA SUGGESTED A LETTER FROM CONSUL GENERAL ADDRESSED TO PRISONERS AT YOKOSUKA PRISON INCLUDING A STATEMENT THAT IT IS UNDERSTOOD THEY WOULD APPEAR AND DEPOSE VOLUNTARILY WOULD BE SATISFACTORY TO GOJ.)

E) CUSTODY OF DEFENDANTS -- NUMATA OPENED DISCUSSION OF THIS MOST DIFFICULT PROBLEM AREA BY SAYING THAT IT IS POSITION OF GOJ THAT SINCE DEFENDANTS QTE ARE NOT HONEST AND REPRESENTATIVE US CITIZENS, CERTAIN PRECAUTIONS HAVE TO BE TAKEN TO PREVENT THEIR BECOMING A RISK TO PUBLIC SAFETY IN JAPAN; BUT AT SAME TIME, JAPANESE AUTHORITIES ARE NOT EMPOWERED LEGALLY TO TAKE EFFECTIVE ENFORCEMENT MEASURES VIS-A-VIS THE DEFENDANTS NOR ARE THEY OBLIGATED TO DO SO UNQTE. HE SAID ONLY LEGAL BASIS FOR JAPANESE TO ACT IN THIS AREA IS ARTICLE 13 OF IMMIGRATION CONTROL LAW WHICH EMPOWERS IMMIGRATION CONTROL INSPECTOR TO PRESCRIBE CONDITIONS OF ADMISSION OF A FOREIGNER AND TO ORDER DETENTION OF A PERSON WHENEVER HE HAS QTE REASON TO FEAR UNQTE THE INDIVIDUAL WILL SEEK TO VIOLATE TERMS OF ADMISSION. THUS, IMMIGRATION INSPECTOR WOULD CALL ON NATIONAL POLICE AGENCY TO ARREST OR RESTRAIN DEFENDANTS ONLY IF HE FEARED THEY WOULD ATTEMPT TO ESCAPE CUSTODY OF AMERICANS WHO, IN GOJ'S VIEW, MUST BE SOLELY RESPONSIBLE FOR THEIR BEHAVIOR AND CUSTODY. SINCE GOJ WILL NOT PERMIT US LAW ENFORCEMENT PERSONNEL TO ENTER JAPAN FOR THIS PURPOSE, CHIEF PROBLEM PRESENTED IS TO PROPOSE MEANS ACCEPTABLE TO GOJ BY WHICH US ATTORNEYS AND/OR EMBASSY PERSONNEL (POSSIBLY CONSULAR OFFICERS OR MARINE SECURITY GUARDS IN CIVILIAN CLOTHES) CAN PERFORM THIS FUNCTION EFFECTIVELY. NUMATA REQUESTED EMBASSY PROPOSE TWO OR THREE ALTERNATIVES FOR HANDLING THIS PROBLEM. EMBASSY BELIEVES BEST SOLUTION MAY BE TO USE 40-PASSENGER BUS OWNED BY EMBASSY'S EMPLOYEE WELFARE ASSOCIATION TO SIMULTANEOUSLY TRANSPORT ALL PERSONS CONCERNED WITH DEPOSITION FROM HANEDA AIRPORT DIRECTLY TO YOKOSUKA PRISON AND RETURN TO AIRPORT. IN SUCH CASE, EMBASSY COULD SEEK TO PERSUADE JAPANESE TO ALLOW ONE OR MORE IMMIGRATION OR POLICE OFFICERS TO RIDE IN BUS OSTENSIBLY TO FURNISH ROAD DIRECTIONS TO DRIVER. EVEN WITHOUT ACCOMPANYING JAPANESE OFFICERS, EMBASSY BELIEVES BUS WOULD FURNISH GREATER SECURITY THAN AUTOMOBILES.

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F) LODGING -- GOJ HAS NOT YET RESOLVED QUESTION OF WHERE DEFENDANTS WOULD BE LODGED IN EVENT THEY MUST REMAIN IN JAPAN ONE NIGHT OR MORE IN ORDER TO COMPLETE DEPOSITION. IT WOULD BE HELPFUL IF EMBASSY COULD BE INFORMED SOONEST HOW MUCH TIME PROBABLY WILL BE REQUIRED TO TAKE DEPOSITION.

G) FINANCIAL RESPONSIBILITY -- NUMATA SAID MOJ INSISTS ON WRITTEN ASSURANCE THAT USG WILL COMPENSATE FOR ANY DAMAGE COMMITTED BY DEFENDANTS AGAINST JAPANESE CITIZENS OR PROPERTY. NUMATA AWARE

THAT THIS REQUIREMENT MIGHT PRESENT DIFFICULTIES BUT THOUGHT THAT SOME MUTUALLY ACCPTABLE FORMULA MIGHT BE WORKED OUT. ONE POSSIBILITY WHICH NUMATA THOUGHT MIGHT BE ACCEPTABLE TO MOJ WOULD BE ALONG FOLLOWING LINES: QTE THE USG UNDERSTANDS THAT IT IS THE INTENTION OF GOJ TO SEEK EX GRATIA COMPENSATION FROM THE USG FOR ANY DAMAGES CAUSED BY THE DEFENDANTS TO JAPANESE CITIZENS OR PROPERTY IN THE COURSE OF THE COMMISSION BY THEM OF ANY VIOLATION OF JAPANESE LAW UNQTE. NUMATA SAID IT WOULD STRENGTHEN HIS HAND IF SOME SUCH PROPOSAL WERE TO COME FROM US SIDE.
H) EXPENSES -- NUMATA SAID GOJ BELIEVES USG SHOULD PAY ALL COSTS INCIDENTAL TO TAKING OF DEPOSITION.
I) PUBLICITY -- GOJ DESIRES DEPOSITION BE HANDLED DISCREETLY WITHOUT PUBLICITY AND DESIRES AN AGREEMENT ON GUIDELINES FOR HANDLING ANY PRESS INQUIRIES.

2. EMBASSY REQUESTS DEPARTMENT'S VIEWS SOONEST WHETHER WE CAN MEET GOJ REQUIREMENTS OUTLINED IN PARA 1 (A) THROUGH (D), (H), AND (I) AND ITS SUGGESTIONS FOR HANDLING PROBLEMS OF CUSTODY AND FINANCIAL COMPENSATION OUTLINED IN PARA 1 (E) AND (G).

3. SINCE FINAL AGREEMENT BEFORE DECEMBER 27 NOW APPEARS UNLIKELY, EMBASSY SUGGESTS DEPARTMENT AND/OR JUSTICE CONSIDER INFORMING TRIAL JUDGE EMBASSY HOPEFUL OF OBTAINING DEFINITE DATE FOR DEPOSITION WITHIN NEXT DAY OR TWO AND URGE HIM GRANT EXTENSION OF DEADLINE.
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